

# HOUSE BILL 1061

D1

CONSTITUTIONAL AMENDMENT

2lr1165

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By: **Delegates Hough, Afzali, McDermott, Parrott, and Ready**

Introduced and read first time: February 10, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Judiciary Department – Commission on Judicial Disabilities – Powers**

3 FOR the purpose of proposing an amendment to the Maryland Constitution relating to  
4 the removal or reprimand of judges by the Commission on Judicial Disabilities;  
5 authorizing the Commission to remove a judge from office for engaging in  
6 certain misconduct while performing the judge's duties; requiring the  
7 Commission to remove a judge from office if, under certain circumstances, the  
8 judge refused to enforce applicable law, court rules, or provisions of the  
9 Maryland Constitution or United States Constitution, rendered a decision or  
10 issued an order that is contrary to applicable law, court rules, or provisions of  
11 the Maryland Constitution or United States Constitution, or knowingly  
12 disregarded applicable law, court rules, or provisions of the Maryland  
13 Constitution or United States Constitution; authorizing the Commission to  
14 issue a reprimand to a judge under certain circumstances if a judge engaged in  
15 certain misconduct while performing the judge's duties; requiring the  
16 Commission to issue a certain order of removal for certain misconduct within a  
17 specified time period; establishing the rights of a judge, who is alleged to have  
18 engaged in certain misconduct, in a certain proceeding before the Commission;  
19 establishing that a judge removed by the Commission for certain misconduct  
20 shall forfeit certain rights and privileges; authorizing certain persons to file a  
21 certain complaint; making stylistic changes; and submitting this amendment to  
22 the qualified voters of the State of Maryland for their adoption or rejection.

23 BY proposing an amendment to the Maryland Constitution

24 Article IV – Judiciary Department

25 Section 4 and 4B

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
27 MARYLAND, (Three-fifths of all the members elected to each of the two Houses  
28 concurring), That it be proposed that the Maryland Constitution read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article IV – Judiciary Department**

2 4.

3 Any Judge shall be removed from office by the Governor, on conviction in a  
4 Court of Law, of incompetency, of willful neglect of duty, misbehavior in office, or any  
5 other crime, or on impeachment, according to this Constitution, or the Laws of the  
6 State; or on the address of the General Assembly, two-thirds of each House concurring  
7 in such address, and the accused having been notified of the charges against [him]  
8 **THE JUDGE**, and having had opportunity of making [his defence] **THE JUDGE'S**  
9 **DEFENSE. SUBJECT TO SECTION 4B(A)(6)(III) OF THIS ARTICLE, ANY JUDGE**  
10 **SHALL ALSO BE REMOVED FROM OFFICE BY THE COMMISSION ON JUDICIAL**  
11 **DISABILITIES IF THE COMMISSION FINDS THAT THE JUDGE ENGAGED IN ANY OF**  
12 **THE MISCONDUCT SPECIFIED UNDER SECTION 4B(A)(6)(II) OF THIS ARTICLE.**

13 4B.

14 (a) (1) The Commission on Judicial Disabilities has the power to:

15 (i) Investigate complaints against any judge of the Court of  
16 Appeals, any intermediate courts of appeal, the circuit courts, the District Court of  
17 Maryland, or the orphans' court; and18 (ii) Conduct hearings concerning such complaints, administer  
19 oaths and affirmations, issue process to compel the attendance of witnesses and the  
20 production of evidence, and require persons to testify and produce evidence by  
21 granting them immunity from prosecution or from penalty or forfeiture.22 (2) The Commission has the power to issue a reprimand and the power  
23 to recommend to the Court of Appeals the removal, censure, or other appropriate  
24 disciplining of a judge or, in an appropriate case, retirement.25 (3) All proceedings, testimony, and evidence before the Commission  
26 shall be confidential and privileged, except as provided by rule of the Court of Appeals;  
27 the record and any proceeding filed with the Court of Appeals shall lose its  
28 confidential character, except as ordered by the Court of Appeals.29 (4) No judge shall participate as a member of the Commission in any  
30 proceedings involving that judge's own conduct, and the Governor shall appoint  
31 another judge as a substitute member of the Commission for those proceedings.32 (5) The Court of Appeals shall prescribe by rule the means to  
33 implement and enforce the powers of the Commission and the practice and procedure  
34 before the Commission.

1           **(6) (I) THE COMMISSION HAS THE POWER TO REMOVE A**  
2 **JUDGE FROM OFFICE IF THE JUDGE ENGAGED IN ANY OF THE MISCONDUCT**  
3 **SPECIFIED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.**

4           **(II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH,**  
5 **THE COMMISSION SHALL REMOVE A JUDGE FROM OFFICE ON A FINDING BY A**  
6 **MAJORITY OF THE MEMBERS THAT THE JUDGE, WHILE PERFORMING THE**  
7 **JUDGE'S DUTIES:**

8                   **1. REFUSED TO ENFORCE APPLICABLE LAW, COURT**  
9 **RULES, OR PROVISIONS OF THIS CONSTITUTION OR THE UNITED STATES**  
10 **CONSTITUTION;**

11                   **2. RENDERED A DECISION OR ISSUED AN ORDER**  
12 **THAT IS CONTRARY TO APPLICABLE LAW, COURT RULES, OR PROVISIONS OF**  
13 **THIS CONSTITUTION OR THE UNITED STATES CONSTITUTION; OR**

14                   **3. KNOWINGLY DISREGARDED APPLICABLE LAW,**  
15 **COURT RULES, OR PROVISIONS OF THIS CONSTITUTION OR THE UNITED STATES**  
16 **CONSTITUTION.**

17           **(III) THE COMMISSION MAY ISSUE A REPRIMAND TO A**  
18 **JUDGE WHO HAS BEEN FOUND BY THE COMMISSION TO HAVE ENGAGED IN ANY**  
19 **OF THE MISCONDUCT SPECIFIED UNDER SUBPARAGRAPH (II) OF THIS**  
20 **PARAGRAPH, IF:**

21                   **1. THE JUDGE WAS NOT ACTING IN AN APPELLATE**  
22 **CAPACITY WHEN THE MISCONDUCT OCCURRED;**

23                   **2. THE MISCONDUCT OCCURRED AS A RESULT OF**  
24 **THE JUDGE'S MISINTERPRETATION OF APPLICABLE LAW, COURT RULES, OR**  
25 **PROVISIONS OF THIS CONSTITUTION OR THE UNITED STATES CONSTITUTION;**  
26 **AND**

27                   **3. THE COMMISSION HAS NOT ISSUED A REPRIMAND**  
28 **TO THE JUDGE WITHIN 1 YEAR BEFORE THE MISCONDUCT OCCURRED.**

29           **(IV) IF THE COMMISSION FINDS THAT ANY OF THE**  
30 **MISCONDUCT SPECIFIED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH**  
31 **OCCURRED IN A CASE BEFORE THE COURT OF APPEALS OR IN A CASE BEFORE A**  
32 **PANEL OF JUDGES IN ANY OTHER COURT IN THE STATE, THE COMMISSION MAY**  
33 **NOT REMOVE OR REPRIMAND A JUDGE WHO SAT IN THE CASE UNLESS THE**

1 JUDGE VOTED IN FAVOR OF THE RULING OR DECISION THAT THE COMMISSION  
2 FINDS TO BE MISCONDUCT UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

3 (V) ON A FINDING THAT A JUDGE ENGAGED IN ANY OF THE  
4 MISCONDUCT SPECIFIED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE  
5 COMMISSION SHALL ISSUE AN ORDER OF REMOVAL SPECIFYING AN EFFECTIVE  
6 DATE OF THE JUDGE'S REMOVAL THAT SHALL OCCUR NO SOONER THAN 30 DAYS  
7 AND NO LATER THAN 60 DAYS AFTER THE ORDER IS ISSUED.

8 (VI) IN A PROCEEDING BEFORE THE COMMISSION UNDER  
9 THIS PARAGRAPH, A JUDGE SHALL:

10 1. HAVE THE RIGHT OF REPRESENTATION BY  
11 COUNSEL; AND

12 2. HAVE THE RIGHT TO TESTIFY ON THE JUDGE'S  
13 OWN BEHALF IN PERSON OR BY WRITTEN STATEMENT.

14 (VII) A JUDGE REMOVED UNDER THIS PARAGRAPH SHALL  
15 FORFEIT ANY RIGHTS AND PRIVILEGES, INCLUDING PENSION BENEFITS,  
16 ACCRUING FROM THE JUDGE'S JUDICIAL SERVICE.

17 (VIII) A COMPLAINT ALLEGING MISCONDUCT UNDER THIS  
18 PARAGRAPH MAY BE FILED BY ANY PERSON, INCLUDING BY A PARTY OR BY  
19 COUNSEL FOR A PARTY IN A CASE, WHETHER PENDING OR CONCLUDED, IN  
20 WHICH A PRESIDING JUDGE IS ALLEGED TO HAVE ENGAGED IN THE  
21 MISCONDUCT COMPLAINED OF UNDER THIS PARAGRAPH.

22 (b) (1) Upon any recommendation of the Commission, the Court of  
23 Appeals, after a hearing and upon a finding of misconduct while in office, or of  
24 persistent failure to perform the duties of the office, or of conduct prejudicial to the  
25 proper administration of justice, may remove the judge from office or may censure or  
26 otherwise discipline the judge, or the Court of Appeals, after hearing and upon a  
27 finding of disability which is or is likely to become permanent and which seriously  
28 interferes with the performance of the judge's duties, may retire the judge from office.

29 (2) A judge removed under this section, and the judge's surviving  
30 spouse, shall have the rights and privileges accruing from the judge's judicial service  
31 only to the extent prescribed by the order of removal.

32 (3) A judge retired under this section shall have the rights and  
33 privileges prescribed by law for other retired judges.

34 (4) No judge of the Court of Appeals shall sit in judgment in any  
35 hearing involving that judge's own conduct.

1           (c) This section is alternative to, and cumulative with, the methods of  
2 retirement and removal provided in Sections 3 and 4 of this Article, and in Section 26  
3 of Article III of this Constitution.

4           SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly  
5 determines that the amendment to the Maryland Constitution proposed by this Act  
6 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the  
7 Maryland Constitution concerning local approval of constitutional amendments do not  
8 apply.

9           SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section  
10 proposed as an amendment to the Maryland Constitution shall be submitted to the  
11 qualified voters of the State at the next general election to be held in November, 2012  
12 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.  
13 At that general election, the vote on this proposed amendment to the Constitution  
14 shall be by ballot, and upon each ballot there shall be printed the words “For the  
15 Constitutional Amendment” and “Against the Constitutional Amendment,” as now  
16 provided by law. Immediately after the election, all returns shall be made to the  
17 Governor of the vote for and against the proposed amendment, as directed by Article  
18 XIV of the Maryland Constitution, and further proceedings had in accordance with  
19 Article XIV.